

# ***Taking Back What is Rightfully Yours***

**An Owner's Manual for the Hudson-Raritan Estuary  
and  
Guide to the Public Trust Doctrine**



**Presented by NY/NJ Baykeeper**

**The Public Trust Doctrine Campaign is supported with funding from:**  
Educational Foundation of America, Geraldine R. Dodge Foundation, Fund for New Jersey, Environmental Endowment for New Jersey, and Prospect Hill Foundation

**The Public Trust Doctrine Conference is cosponsored by:**  
NY/NJ Baykeeper, Rutgers University Environmental Law Clinic,  
Columbia University Environmental Law Clinic, and Working Waterfront Association

## **Executive Summary:**

### ***What is the Public Trust Doctrine?***

The Public Trust Doctrine is a legal precedent dating back to Roman times. It holds that navigable rivers, streams, wetlands, seashores and bays belong to the people.

The Doctrine declares that all of us have an unassailable right to access and use the waterfront for traditional purposes such as navigation, commerce, and fishing. A growing body of U.S. case law has expanded that definition to include the assurance of diverse recreational uses, as well as a guarantee of the protection of habitats and natural systems.

According to the evolving body of modern law defining the Public Trust Doctrine, government—especially state government—acts as a public trustee. Under the Doctrine, states must ensure and protect the public's right to freely access, use, and enjoy navigable waters and the lands beneath them.

### ***A Secret Weapon for Environmental Activists***

The Public Trust Doctrine has been referred to by some legal experts as a secret weapon for environmental action. It gives activists a tool with which to challenge legislative and administrative decisions harmful to rivers and bays.

The single most important feature of Public Trust law is its ability to override prior legal claims. As a result, water rights that are demonstrably harmful to a navigable river or estuary can be set aside by application of the Doctrine, regardless of how old those prior claims may be. Thus the rights claimed by developers denying access or polluters preventing fishing are superceded by the Public Trust Doctrine.

It's important to note that the Public Trust Doctrine says that the tidal waters, waterfront resources, and wetlands held by the states in trust for the people even include lands that are privately owned. While the state can lease or sell tidally flowed lands, it can never sell the public's rights in those lands; and, indeed, is duty bound to take steps to protect those rights. Another key point: the jurisdiction of the Public Trust Doctrine generally extends to *all lands below the historic mean high tide line*. This means that bulkheaded lands, or wetlands and tidal areas filled-in at any time in the past are protected under the Doctrine.



***The Public Trust Doctrine  
has been referred to  
by some legal experts  
as a secret weapon  
for environmental action***

## ***Putting the Public Trust Doctrine to Use in the Hudson-Raritan Estuary***

The application of the Public Trust Doctrine to all projects and activities affecting the Hudson-Raritan Estuary immediately raises the environmental ante. It forces the states of New York and New Jersey to apply a higher standard of judgment to their own policies, and to take seriously the enforcement of laws against illegal developments and polluters. The Public Trust Doctrine demands that the agencies fulfill their role as public trustee: It places the burden of proof on the agencies to show that their actions are not environmentally harmful.

What the Doctrine clearly shows is that the waters of the Hudson-Raritan Estuary don't belong to developers who illegally fill in wetlands or try to block waterfront access. It doesn't belong to General Electric, Occidental Chemical, or petroleum refiners and shippers who limit public use and access through pollution of the resource. It doesn't belong to New York City or any municipality who dumps sewage into these waters. It doesn't belong to the Port Authority, Army Corps of Engineers, Environmental Protection Agency, Hackensack Meadowlands Development Commission, NJDEP or NYDEC, or any other regulator.

### ***The Public Trust Doctrine: An Environmental Bottom Line***

The entire Hudson-Raritan Estuary is considered by law to be "Trust Lands" belonging to you and me: to the people. The governments of New York and New Jersey are obligated to act as protector of these waters, serving as the people's trustee. When state governments fail to perform these duties, it is the public's right to hold the government trustee accountable and take legal action.

Violations of the Public Trust Doctrine are everywhere to be seen in our estuary today: Pollution restricts public access to the bays, rivers, streams, and wetlands. High rise apartments and office complexes, rusting bulkheads and new fences mar the shoreline, stopping access. The filling of wetlands restricts public use. Even the problem of contaminated dredge spoils is impacted by the Public Trust Doctrine: The high cost of removing these polluted materials places restrictions on navigation, a critically important public use guaranteed under the Doctrine.

Whenever private privilege is unfairly elevated over public rights, whenever a government regulator fails to enforce estuary environmental laws, that is a violation of the Public Trust Doctrine. Whenever a use of the estuary damages trust lands and tidal waters, or destroys fish and wildlife habitat, that is a violation of the Public Trust Doctrine. And every violation of the Public Trust Doctrine must be fought.